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**DECISION**



*L. Hutzman*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-190185

**DATE:**

**AUG 8 1978**

**MATTER OF:** Navajo Freight Lines, Inc.

**DIGEST:**

1. Description on bill of lading is not necessarily controlling in determining applicable rate; important fact is what moved, not what was billed.
2. Nature and character of each shipment at time it is tendered to carrier determines its status for rate purposes.
3. Significant facts which weigh heavily in classifying shipment for rate purposes are producer's description of article for sales purposes, manner in which it is billed, its use and value, how it is regarded in the trade.
4. Where an article has more than one use, the predominant use determines its character for rate purposes.
5. Carrier is correct in its contention that commodity shipped is properly described as insulating material, NOI, and not as vermiculite, other than crude, where Federal Specification and sales pamphlets characterize it as such and where advertising pamphlets indicate that commodity is regarded in the trade as insulating material.

Navajo Freight Lines, Inc. (Navajo), in a message dated January 13, 1978, requests that the Comptroller General of the United States review the General Services Administration's (GSA) action on two of its bills for transportation charges (Navajo Claims Nos. 107828 and 60437). See Section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. 66(b) (Supp. V, 1975). GSA, after auditing the bills, notified Navajo of overcharges of \$4,318.14 and \$885.30, for a total of \$5,203.44. In the absence of refund, both overcharges were deducted from other monies due Navajo.

Under regulations implementing Section 201(3) of the Act, a deduction action constitutes a reviewable settlement action. 4 C.F.R. 53.1(b) (1) (2) and 53.2 (1977). Navajo's message complies with the criteria for requests for review of that action. 4 C.F.R. 53.3 (1977).

GSA reports that its action was taken on two shipments transported from the GSA Federal Supply Service, Fort Worth, Texas, to Lyoth, California, and to Stockton, California. The shipments moved on Government bills of lading (GBL) Nos. P-7191699 and D-7746350, respectively. The commodity transported is described on the GBLs as "INSULATING MATERIAL NOI; STOCK OR PART NO. 564008014176" or "STOCK OR PART NO. 56401806623."

Navajo collected freight charges of \$1,199.70 on the shipment moving under GBL No. D-7746350 based on the class rating applicable to "insulating material, NOI." Item 103300 of the National Motor Freight Classification (NMFC) lists several less-than-truckload ratings on insulating material, NOI, based on the density of the commodity as packed for shipment. GSA audit action was based on a class rating applying to a commodity described in item 48510 of the NMFC as "vermiculite, other than crude," which provides a lower rating than those on insulating material, NOI. Vermiculite is classified in the NMFC under the generic heading "Clay Group." This lower rating produced total transportation charges of \$314.40 for an overcharge of \$885.30, which was assessed against Navajo.

For the shipment moving under GBL No. P-7191699, Navajo collected freight charges of \$4,833.97, also based on the class rating applying to "insulating material, NOI." GSA determined in its audit that lower transportation charges of \$515.83 were available to the Government based on Item 7521 of Rocky Mountain Motor Tariff Bureau, Inc., Agent, U.S. Government: Quotation ICC RMB Q17-B. Item 7521 applies to "FREIGHT ALL KINDS, EXCEPT THE FOLLOWING ARTICLES: \* \* \* INSULATING MATERIAL AS DESCRIBED IN ITEMS 103300 THRU 103416 OF NMF [NMFC] 100. \* \* \*" Navajo contends that the commodity shipped was insulating material and that Item 7521 does not apply.

The issue here is whether the commodity described on both bills of lading is classified for rate purposes as vermiculite, other than crude, as contended by GSA, or as insulating material, NOI, as contended by Navajo.

The commodity shipped was described on both of the GBL's as "Insulating Material, NOI." And GSA correctly states a well-settled principle of transportation law that the description on the bill of lading is not necessarily controlling in determining

the applicable rate to be applied. The important fact is what moved, not what was billed. Mead Corp. v. Baltimore & Ohio R.R., 308 I.C.C. 790, 791 (1959); 57 Comp. Gen. 155 (1977); 53 Comp. Gen. 868 (1974); 52 Comp. Gen. 924 (1973).

GSA contends that vermiculite has many and varied characteristics and uses other than that of insulating material. GSA refers to Webster's Third International Dictionary, which describes expanded vermiculite as a "lightweight highly water-absorbent material that is used in seedbeds as a mulch, in plaster, mortar and concrete as a substitute for sand, and as an insulating material in walls, floors and ceilings."

GSA contacted the Traffic Manager for Strong-Lite Products (Strong-Lite), Pine Bluff, Arkansas, one of the contractors furnishing vermiculite to the Government. The Traffic Manager furnished GSA several sales pamphlets which illustrate the various uses for expanded vermiculite.

The nature and character of each shipment at the time it is tendered to the carrier determines its status for rate purposes. Union Pacific R.R. v. Madison Foods, Inc., 432 F. Supp. 1033 (D. Neb. 1977); Chicago, Burlington & Quincy R.R. v. National Broadcasting Co., 337 F. Supp. 481 (D. S.D. 1972); Great Northern Ry. v. United States, 178 Ct. Cl. 226 (1967); Senken Calamba Corp. v. Union Pacific R.R., 145 F.2d 808 (10th Cir. 1944). Significant facts which weigh heavily in making the determination are the producer's description of the article for sales purposes, the manner in which it is billed, its use and value, and how it is regarded in the trade. Pacific Paper Products, Inc. v. Garrett Freight Lines, Inc., 351 I.C.C. 309, 316, 317 (1975); Fibre Bond Corp. v. Canadian National Ry., 318 I.C.C. 549 (1962); Merrimack Leather, Inc. v. Boston & Maine R.R., 306 I.C.C. 611, 613 (1959).

One of the advertising pamphlets furnished by Strong-Lite is published by the Vermiculite Association, Inc., and states that it meets Federal Specifications H-H-I 585b-Type II or III, Class 2 (the commodity shipped was Class I, but the same specification applies). The commodity is described as "VERMICULITE MASONRY INSULATION." The pamphlet states under the heading of "Features & Advantages," that "Vermiculite water repellant masonry insulation is specially manufactured to insulate brick cavity walls or walls built with concrete blocks.

Vermiculite is both rot proof and vermin proof and provides an inorganic insulation for these type walls that will last for the life of the building." The pamphlet reads further under the heading of "Loose Fill Insulation" that:

"Vermiculite is an excellent general purpose pouring type insulation and is available from the same plants that manufacture vermiculite masonry insulation. Its characteristics of rot and vermin proof, inorganic and incombustibility make it an ideal material for the insulation of attics. It can also be easily poured over other types of old insulation that have settled and have become ineffective, flows readily around pipes and electrical wiring to provide a complete re-insulation job. . . ."

Another advertising pamphlet furnished by the Government contractor described the commodity as "Strong-Lite Cavity Fill Vermiculite," and states that it meets Interim Federal Specifications - NM-I-00595 2(GSA-FSS) Type II for structures designed for human occupancy in the temperature range of -60° to 180°F (00545 could be a typographical error as correct designation is 585, or this could refer to a later specification). The pamphlet states that:

"Permanent insulation of concrete blocks and masonry walls with cavities is made easily and economically. Reduces the heat flow and noise transmission. \* \* \* Save on heating and air-conditioning initial cost-- save on operating cost throughout the life of the building."

According to the advertising pamphlets, Strong-Lite makes other vermiculite products such as concrete aggregate, plaster aggregate, and horticultural and house fill. However, those pamphlets stress the use of vermiculite as insulating material, and it is characterized as insulating material. The advertising pamphlets also indicate that it is regarded in the trade as insulating material.

The commodity shipped is described in the GSA supply catalog as:

"INSULATION, THERMAL

Vermiculite insulation. Dry, loose fill restricts flow of heat. Ltd. pack: 1. Class 1, Fed. Spec. HH-I-585. Coarse. 4-lb. bag. Effective up to 2,000° F. Type II. 5640-00-801-4176

Extra Coarse. Effective up to 180° F. 15-lb bag. Type I. 5640-00-180-6623."

Federal Specification HH-I-585C (referred to in the advertising pamphlets), effective October 17, 1974, describes the commodity as "INSULATION, THERMAL (VERMICULITE)." The following pertinent information is also shown in the Federal Specification:

"1.1 Scope. This specification covers expanded or exfoliated vermiculite thermal insulating material in the dry loose condition for use as fill insulation to restrict the flow of heat.

\* \* \* \* \*

Type I - Extra coarse.

Type II - Coarse

\* \* \* \* \*

Class 1 - Not treated for water repellency.

\* \* \* \* \*

### 3. REQUIREMENTS

3.1.1 Class 1. Class 1 material shall be a loose fill insulation composed of expanded or exfoliated vermiculite.

\* \* \* \* \*

### 6.1 Intended use.

6.1.1 Type I. Intended for the insulation of structures designed for human occupancy in the temperature range of -50° to +180° F.

6.1.2 Type II. Intended for the insulation of structures designed for human occupancy in the temperature range of -60° to +180° F, for structures intended for cold storage or low temperature testing, and for structures or equipment operated in the temperature range of -100° to +2000° F.

\* \* \* \* \*

6.1.5 Class 1. Intended for insulation in areas where condensed moisture is not a factor. May also be used as an absorbent material for air shipment of dangerous liquids packaged in glass containers, paint, etc., for mailing through the U.S. Postal Service.

\* \* \* \* \*

### 6.3 Description of vermiculite.

Vermiculite is a micaceous mineral containing a small amount of water. The crude vermiculite ore is mined, cleaned, and milled to a controlled size. It is then heated to a temperature of about 2000° F which causes each granule to expand about 12 times its original size. The expanded vermiculite contains thousands of entrapped air cells which account for its thermal insulation and light weight."

The use to which an article may be put is not controlling, but it is helpful in determining what the article is. Pacific Paper Products, Inc., supra. In Fibre Bond Corp., supra, at p. 554, the ICC held that "Although the use to which a commodity is put is not determinative of its tariff description, in the case of the description 'Insulating material' the question of use is implicit in the description."

GSA contends that the vermiculite as shown in the Federal Specification, paragraph 6.1.5, can also be used as absorbent material for air or mail shipments which it states is evidence of the fact that it has many characteristics. However, in our opinion, this use is incidental to its use as insulating material as described in the Federal Specification. See Fibre Bond Corp., p. 554, supra. Furthermore, where the commodity

is used as absorbent material for air or mail shipments, it can be characterized as insulating material against damage. And where an article has more than one use, the predominant use determines its character. W. R. Grace & Co. v. Illinois Central P.R., 323 I.C.C. 102, 106 (1964).

In our opinion, the advertising pamphlets and the Federal Specification show clearly that the commodity shipped should be classified for rate purposes as insulating material, as described in Items 103300 thru 103416 of the NMFC. "NOI" is defined in the NMFC as "not more specifically described herein." Since the commodity shipped on GBL Nos. P-7191699 and D-7746350 is not more specifically described in the classification, the commodity description of "Insulating Material, NOI" applies. See Federal Auto Products Co. v. Transport Motor Express, Inc., 302 I.C.C. 311 (1957); Celotex Corp. v. Alabama Great Southern R.R., 292 I.C.C. 793 (1954).

Action should be taken by GSA in accordance with this decision.

R.F. KELLER

Deputy Comptroller General  
of the United States